

PUBLIC ADMONISHMENT OF JUDGE RICHARD S. FLIER

The Commission on Judicial Performance has ordered Judge Richard S. Flier publicly admonished for improper conduct within the meaning of Article VI, section 18(d) of the California Constitution, as set forth in the following statement of facts and reasons found by the Commission:

On October 21, 1993, Lindell Abercrombie, an African-American adult, appeared before Judge Flier at a hearing in People v. Abercrombie. The following occurred:

PROSECUTOR [addressing Abercrombie]: Sir, you have a right to trial by court or jury on the charges and enhancements and probation ineligibility clauses charged against you. You understand that right? ABERCROMBIE: Yes.

PROSECUTOR: Do you waive that right?

ABERCROMBIE: Yes, I waive all of that. I waive all -COURT: Mr. Abercrombie, we will have to do this in an organized fashion. When he asks you a question, I want you to answer only that question. Got it? Okay. Good boy. Go ahead, please.

Following this incident, another African-American defendant sought to disqualify Judge Flier based on his remark to Mr. Abercrombie (People v. Perkins). The motion was granted. The First District Court of Appeal reversed on the ground that Mr. Abercrombie himself did not challenge Judge Flier. The court did not rule on the propriety of the judge's remark to Mr. Abercrombie:

"Whether Judge Flier's use of the words 'good boy' in addressing an adult male of African-American descent was unseemly, rude, racially insensitive, or simply thoughtless, no objection or other comment was raised by Mr. Abercrombie or his counsel [at the time of the incident or later during the proceeding]. . . . In the context of the entire proceeding, the words 'good boy' would not lead a person to reasonably entertain a doubt about Judge Flier's ability to be impartial toward Mr. Abercrombie because of race or for any other reason."

23 Cal.App.4th 165, 171-72. The court noted that if anyone "believes that Judge Flier's comment warrants discipline, they may file a complaint with the Commission on Judicial Performance." 23 Cal.App.4th 165, 170 n. 4.

The Commission found that, based on the content of the remark and the reported tone used by Judge Flier, his reference to the in-custody adult defendant as a "good boy" manifested racial insensitivity.

The Commission also found that Judge Flier's remark damaged the respect for the judiciary held by members of the public who were present and, as such, was "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Cal. Const., Art. VI, § 18(d). While notoriety is not required for "conduct prejudicial," Judge Flier's remark led to substantial adverse publicity that further diminished public

confidence in the judiciary and brought the judiciary into disrepute. (See Wenger v. Commission on Judicial Performance (1981) 29 Cal.3d 615, 622 n. 4, quoting McCartney v. Commission on Judicial Qualifications (1974) 12 Cal.3d 512, 534.)

Judge Flier's conduct was contrary to these provisions of the California Code of Judicial Conduct: Canon 3 (avoiding the appearance of bias or prejudice), Canon 2 (preserving public confidence in the judiciary), and Canon 1 (maintaining high standards of conduct).

Judge Flier consented to public admonishment.